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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/775,753   | 02/10/2004  | Todd Craig           | PI028-00/P12-U      | 8722             |
| 24350 7590 03/10/2009<br>STITES & HARBISON, PLLC<br>400 W MARKET ST<br>SUITE 1800<br>LOUISVILLE, KY 40202-3352 |             |                      |                     |                  |
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| HICKS, ROBERT J  |             |                      |                     |                  |
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/775,753

**Applicant(s)**

CRAIG ET AL.

**Examiner**

ROBERT J. HICKS

**Art Unit**

3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 January 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9 and 14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

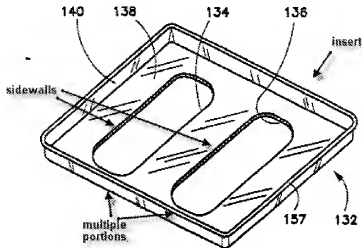
2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. **Claims 1-9 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wang (USPN 5,800,853) in view of Valdastrì, Sr. (USPN 2,386,993) [hereinafter Valdastrì].**

4. Regarding Claims 1 and 14, the patent to Wang – a baking pan kit – discloses an apparatus (Fig. 13) for holding multiple pizzas (Col. 2 Lines 32-35 and Lines 40-47, Col. 3 Lines 1-3 and Lines 28-31), the apparatus comprising: a pan (130) having a bottom (142); and an insert (132 and 194) adapted to fit within the pan (Col. 11 Lines 23-24), the insert being divided into multiple portions (Fig. 13), with each of the multiple portions comprising a plurality of sidewalls extending between a base of the insert and an upper

portion of the insert, the sidewalls generally surrounding an open end defined in the base (Fig. 13). Pizza is known to one of ordinary skill as a food made from dough.



Wang does not expressly disclose that when a sheet of dough is placed across the insert, the dough contacts the bottom of the pan through the open end of each of the multiple portions, along with the sidewalls of the insert so as to form a separate crust for one of the multiple pizzas within each of the multiple portions of the insert. However, the patent to Valdastrì – an insert for making ravioli – teaches an insert that can be rested on a flat surface (**Valdastrì**, Fig. 1, Page 1 Col. 2 Line 52 to Page 2 Col. 1 Line 3), on which a sheet of dough (**Valdastrì**, 22, 24) can be placed across the insert (**Valdastrì**, Fig. 1) and the dough can contact the bottom of the pan through the open end of the multiple portions and along the sidewalls of the insert (**Valdastrì**, Figs. 6-7, Page 1 Col. 2 Line 52 to Page 2 Col. 1 Line 3) to form separate crusts for each of the multiple food portions made from the insert (**Valdastrì**, Figs. 1 and 7). The insert can be placed on a flat surface similar to the bottom of a pan, and the dough can be placed in the insert and the dough can touch the sidewalls as well as the flat surface on the

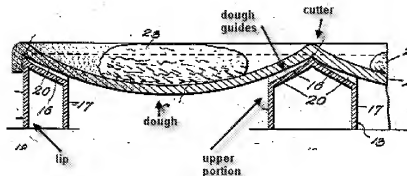
bottom. It would have been obvious at the time of the invention to one of ordinary skill, using the teaching, suggestion, and motivation within the prior art, to modify the insert in the Wang baking pan to comprise multiple portions, and allow for dough placed across the insert to touch the bottom of the pan as well as the sidewalls to make separate crusts for the pizzas, as suggested by Valdastrì, "which will form the completed ravioli and cause the same to be deposited upon a table or the like." (**Valdastrì**, Page 1 Col. 1 Lines 16-18)

5. Regarding Claim 2, Wang in view of Valdastrì discloses all the limitations substantially as claimed, as applied to claim 1 above; further, Valdastrì teaches the insert defines a center bar disposed (**Valdastrì**, 16) above the upper portion of the insert; further wherein the center bar and the sidewalls are arranged such that a single sheet of dough laid across the insert is readily divided along the center bar (**Valdastrì**, 18) to form separate crusts for the multiple pizzas (**Valdastrì**, Figs. 1 and 7).

6. Regarding Claim 3, Wang in view of Valdastrì discloses all the limitations substantially as claimed, as applied to claim 1 above; further, Valdastrì teaches the insert defines a generally planar platform (**Valdastrì**, 16, Fig. 1) extending in the upper portion outwardly from the sidewalls.

7. Regarding Claim 4, Wang in view of Valdastrì discloses all the limitations substantially as claimed, as applied to claim 3 above; further, Valdastrì teaches a lip (**Valdastrì**, 11-12) extending toward the base and disposed along an edge of the platform to structurally strengthen the insert (**Valdastrì**, Fig. 1).

8. Regarding Claim 5, Wang in view of Valdastri discloses all the limitations substantially as claimed, as applied to claim 1 above; further, Valdastri teaches the insert defines a plurality of dough guides (**Valdastri**, Fig. 4) adapted to generally center dough laid across the insert, the dough guides extending above the upper portion.



9. Regarding Claims 6 and 7, Wang in view of Valdastri discloses all the limitations substantially as claimed, as applied to claims 5 and 1 above, respectfully, further, Valdastri teaches the insert defines a plurality of stabilizers (**Valdastri**, 17) extending from the dough guides toward the base, the stabilizers being adapted to stabilize the insert within the pan (**Valdastri**, Figs. 1 and 4).

10. Regarding Claim 8, Wang in view of Valdastri discloses all the limitations substantially as claimed, as applied to claim 1 above; further, Valdastri teaches the sidewalls (**Valdastri**, 16, Fig. 4) are angled with respect to the base in a manner to create the multiple pizzas from a single sheet of dough (**Valdastri**, 22, 24) laid across the insert (**Valdastri**, Fig. 1).

11. Regarding Claim 9, Wang in view of Valdastri discloses all the limitations substantially as claimed, as applied to claim 1 above; further, Valdastri teaches the insert defines a generally rectangular shape (**Valdastri**, Fig. 1); further wherein the

openings are two in number and are of a generally square shape for forming two generally square pizzas.

***Response to Arguments***

12. Applicant's arguments filed January 22, 2009 have been fully considered but they are not persuasive.

13. In response to applicant's argument that Valdastri is nonanalogous art [Remarks, Page 8 Lines 8-11], it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Wang and Valdastri are from the art of utensils used to prepare food made from dough.

14. In response to applicant's argument that Valdastri can not be used to create multiple pizzas or to be an insert placed in a pan [Remarks, Page 9 Lines 3-8], a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. The Valdastri insert can be placed on a flat surface in order to prepare the food (Valdastri, Page 1 Col. 2 Line 53 - Page 2 Col. 1 Line 3). The Valdastri insert also uses dough to prepare food, similar to the Wang baking pan that can be used to make pizza using dough.

15. In response to applicant's argument that there is no suggestion to combine the Wang and Valdastrì references [Remarks, Page 10 Lines 6-19], the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Wang teaches an insert can be used to cook food using dough above the pan even if water is not contained in the bottom pan (Wang, Col. 12 Lines 14-18). Valdastrì teaches the dough (Valdastrì, 22, 24) can touch the sidewalls of the insert when the food is being prepared. When the food is finished, "Each completed ravioli may remain suspended within its mold, or it may gravitate downwardly into the same and rest upon the table." (Valdastrì, Page 1 Col. 2 Line 55 to Page 2 Col. 1 Line 3). The dough can touch the insert sidewalls as well as the bottom surface of the pan.

Based on the above mentioned statements, the examiner is maintaining the rejection of the claims.

### **Conclusion**

16. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).



A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT J. HICKS whose telephone number is (571)270-1893. The examiner can normally be reached on Monday-Friday, 8:30 AM - 5:00 PM, EST. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571) 272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robert J Hicks/  
Examiner, Art Unit 3781

/Anthony D Stashick/  
Supervisory Patent Examiner, Art  
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